

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1998 SESSION

FILED
November 23, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

JAMES CHARLES HUNT,

Appellant,

VS

STATE OF TENNESSEE,

Appellee.

)
)
)
)
)
)
)
)
)
)

C.C.A. NO. 02C01-9805-CC-00150

CROCKETT COUNTY

HON. DICK JERMAN, JR.,
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

FOR THE APPELLEE:

MICHAEL V. THOMPSON
2505 Hillsboro Rd, Suite 201
Nashville, TN 37212

JOHN KNOX WALKUP
Attorney General & Reporter

PETER M. COUGHLAN
Asst. Attorney General
John Sevier Bldg.
425 Fifth Ave, North
Nashville, TN 37243-0498

CLAYBURN L. PEEPLES
District Attorney General

EDWARD L. HARDISTER
Asst. District Attorney General
110 College St, Suite 200
Trenton, TN 38382

OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner was charged in the indictment with first-degree murder, felony murder, especially aggravated robbery, and especially aggravated burglary. On February 4, 1991, he pled guilty to first-degree murder and especially aggravated robbery and received life plus a concurrent twenty-five year sentence as a Range I standard offender. On February 2, 1994, the petitioner filed his petition for post-conviction relief. The petition was initially dismissed for failure to prosecute, but upon motion, the petition was reinstated and an amended petition was filed.

In the amended petition, and later at the hearing, the petitioner argued his defense attorney, Mark Fowler, was ineffective by allowing him to waive his right to a preliminary hearing and failing to pursue a motion to suppress a confession when the petitioner insisted he was coerced, beaten, and deprived of food and water until he signed an incriminating statement. The petitioner also argued Mr. Fowler failed to treat this potential death penalty case seriously, as evidenced by the small amount of time (69 hours) he spent with him during his representation and his failure to immediately request co-counsel. The petitioner suggested that due to other pending cases and personal concerns, Mr. Fowler did not have adequate time to effectively handle this serious case. The trial court discredited the petitioner's position, found that Mr. Fowler's representation was not deficient, and denied the petition for relief.

In reviewing the petitioner's Sixth Amendment claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by Mr. Fowler were within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). The petitioner "must show that counsel's representation fell below an objective standard of reasonableness" and that this performance prejudiced the defense, that is, there must be a reasonable probability that but for counsel's error the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 692, 694 (1984); Best v. State, 708 S.W.2d 421, 422 (Tenn. Crim. App. 1985). To satisfy the requirement of prejudice,

he must demonstrate a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Bankston v. State, 815 S.W.2d 213, 215 (Tenn. Crim. App. 1991).

Here, even assuming that the evidence preponderates against the trial court's finding that Mr. Fowler's representation fell below the range of competence demanded of attorneys in criminal cases, the petitioner has failed to show prejudice. Most of the petitioner's brief is dedicated to emphasizing how little time his attorney spent on his case. In the meantime, however, the petitioner fails to show, for instance, that but for his counsel's performance, his inculpatory statement to authorities would have been suppressed, or that he would have proceeded to trial, or that the outcome of the proceedings would have been different. In fact, because the record is devoid of any evidence suggesting that the State would have been unable to prove aggravating factors warranting the death penalty, it appears likely to us that had the petitioner proceeded to trial he might not have received as favorable a sentence as he did by pleading guilty. In short, without any showing of prejudice, the petitioner's claims must fail. The trial court's denial of post-conviction relief is affirmed.

JOHN H. PEAY, Judge

CONCUR

DAVID G. HAYES, Judge

L. T. LAFFERTY, Senior Judge